

AGREEMENT FOR BOND COUNSEL SERVICES

This Agreement is entered into as of October 23, 2018 between the County of San Mateo, (the “County”), the San Mateo County Joint Powers Financing Authority (the “Authority” and collectively, with the County, the “Issuer”) and Orrick, Herrington & Sutcliffe LLP (“Bond Counsel”), as follows:

Recitals

A. The Issuer currently contemplates over the next few years the need, from time to time, to finance cash flow needs, capital improvements, and the refunding of outstanding obligations, all through direct issuances or issuances in conjunction with the San Mateo County Joint Powers Financing Authority of Lease Revenue Bonds or other obligations (collectively, the “Bonds”) in one or more issuances. The Issuer desires to retain Bond Counsel to perform legal services in connection with the Bonds, and to set forth the terms of Bond Counsel’s employment in connection with the preparation of proceedings for the delivery of the Bonds and for consultation and related legal services in connection therewith.

B. Bond Counsel possesses the necessary professional capabilities and resources to provide the legal services required by Authority as described in this Agreement.

Agreements

1. Term: This Agreement shall remain in effect unless terminated in writing as provided herein; provided that services provided hereunder are expected to be provided on or before June 30, 2021.

2. Scope of Services.

Bond Counsel shall provide the following services with respect to the Bonds of each series:

(a) Consultation with the Issuer and its staff and counsel and the County’s financial consultant concerning the proceedings for authorizing the issuance of the Bonds, including preparation of resolutions, documents, notices, and certificates as required by law for such issuance.

(b) Consultation with the Issuer, the Issuer’s financing consultant, and any other participating entities, concerning the timing, terms and structure of the proposed financing, including analysis of the advantages and disadvantages of each available financing technique and considerations of state law, federal tax law, federal securities law and general public finance law.

(c) Preparation of the proceedings for the authorization, issuance and sale of the Bonds, including resolutions, authorizing the issuance of the Bonds and securing and setting forth the terms and conditions of the Bonds, and their form, date, denominations and maturity, and preparation of the proceedings for the sale of the Bonds (but excluding preparation of the Bond Purchase Contract which is prepared by counsel to the Underwriters).

- (d) Attendance at meetings of the Issuer, as requested by the Authority or County.
- (e) Assistance in the preparation of a timetable setting forth the actions necessary to accomplish the authorization and sale of the Bonds.
- (f) Review, as to those matters that are related to the issuance and sale of the Bonds, of the official statement describing the Bonds to be prepared by the Issuer's disclosure counsel or underwriter's counsel, and participation in meetings reviewing the official statement, but Bond Counsel will not be responsible for the preparation or content thereof or the rendering of any opinion thereon.
- (g) Review, as to those matters that are related to the issuance and sale of the Bonds, any environmental impact reports on the Project to be prepared by the County; but Bond Counsel will not be responsible for the preparation or content of such documents.
- (h) Attendance at and participation in meetings with rating agencies and prospective bond bidders, if deemed necessary or desirable by the County.
- (i) If the Bonds are to be sold at public sale, participation in the public sale of the Bonds, if requested, and review and approval as to legality of the bids received for the Bonds.
- (j) Assistance in obtaining any governmental approvals necessary as a condition precedent to issuance of the Bonds, but Bond Counsel shall not be responsible for the obtaining of such approvals.
- (k) Examination of the form of the Bonds, the preparation of final closing papers, the organization and conducting of the closing, and the rendering of a final legal opinion at the time of delivery of and receipt of payment for the Bonds with respect to the validity of such Bonds and the tax status of such Bonds.
- (l) Review of any Bond insurance or any other credit enhancement arrangements, such as letters of credit or lines of credit entered into in connection with the financings, if such credit enhancement is desired by the Issuer.
- (m) Such other legal services as may be incidental to the foregoing, including services requiring Bond Counsel's tax, and other lawyers.

(c). *Excluded Services.* Bond Counsel services are limited to those specifically set forth above. Bond Counsel services do not include representation of the Authority, the County, or any other party to the transaction in any litigation or other legal or administrative proceeding involving any of the Bonds or any related matter. Bond Counsel services also do not include any responsibility for compliance with state blue sky, environmental, land use, real estate, or similar laws. Bond Counsel services do not include any financial advice or analysis. Bond Counsel will not be responsible for the services performed by or acts or omissions of any other participant. Bond Counsel's services hereunder will not extend past the date of issuance of each series of the Bonds and will not, for example, include services related to rebate compliance or continuing disclosure, investment of Bond proceeds, or otherwise related to the Bonds or the

permitted use of Bond proceeds after delivery of the Bonds, for which Bond Counsel may be separately compensated.

3. Compensation.

(a) Bond Issuance. Bond Counsel will be paid a fixed fee upon delivery of the Bonds of each series in the amount agreed to prior to the pricing of the issue of Bonds. Such fee includes out-of-pocket expenses which, together with the fixed fee, shall be included in the sizing of the issue and paid at closing of the issue. Such fee will be contingent on the issuance of the Bonds and payable solely from proceeds of the Bonds. The fees for the San Mateo County Joint Powers Financing Authority Lease Revenue Bonds (Capital Projects), 2018 Series A, will be in the amount of \$175,000 and the amount of fees for the San Mateo County Joint Powers Financing Authority Lease Revenue Bonds (Forward Refunding), 2019 Series A will be in the amount of \$75,000. An additional lease revenue financing may be issued prior to July 1, 2021, however, the total fees for the Bond issuances contemplated herein prior to July 1, 2021 shall not exceed \$350,000. The maximum amount payable hereunder may be adjusted to reflect legal services required additional to those assumed herein.

(b) Additional Legal Advice and Services. The parties acknowledge that the County or the Authority might need consultation of Bond Counsel from time to time, prior to or following issuance of the Bonds, or on matters not directly related to a pending bond issue, including opinions on the permitted use of bond proceeds. Bond Counsel shall be available at the request of the County or the Authority to perform such legal analysis and render such advice in written or oral form, as the County or the Authority shall request. Unless otherwise arranged between the parties, compensation for such advice shall be on the basis of Bond Counsel's customary hourly rates in effect at the time, noncontingent, and shall be billed and payable upon receipt of an invoice, and may be paid upon the issuance of the next following series of Bonds at the preference of the County.

(c) Other Services. Bond Counsel subsidiary BondLogistix is available to provide rebate compliance, continuing disclosure, and/or investment services pursuant to separate agreement.

(d) Assumptions and Adjustments. Bond Counsel is able to deliver its services at the fee quoted before pricing by working as efficiently as possible. The parties understand that significant departure from the structure or schedule described, or significant change in the legal structure after agreeing on a fee and after drafting of the basic legal documents has commenced, if such is requested by the Issuer or by or on the advice of the Issuer's financing consultant, is expected to occasion substantial additional time and effort on the part of Bond Counsel, and shall entitle Bond Counsel to an adjustment to the fee.

(e) Hourly Rate Services. The Issuer agrees that any additional services requested will be charged at the hourly rates of the attorneys and paralegals assigned, unless otherwise agreed upon between the Issuer and Bond Counsel following notice to Bond Counsel by the Issuer or the Issuer's financing consultant that such work is desirable. Hourly rates are adjusted annually, and Bond Counsel agrees to provide such rates upon request.

4. Reimbursement. In addition to the compensation provided for above, Authority will reimburse Bond Counsel for costs and expenses (direct and indirect) incurred in connection with the services, including (without limitation) filing and publication, document reproduction and delivery, travel, long distance telephone, fax, word processing, computer research, secretarial overtime and other similar expenses. Any filing, publication, printing or data costs required in connection with the Bonds shall be paid directly by the Issuer, but if paid by Bond Counsel on behalf of the Issuer, shall be reimbursed to Bond Counsel on request, notwithstanding any other provision of this Agreement.

Bond Counsel will provide copies of transcripts in the number and format as the Issuer shall request, provided that all costs of reproduction, assembly, binding and CD-ROM burn-in shall be charged to the Issuer, unless the Issuer instructs that other parties are to bear their own costs.

5. Payment. Unless otherwise noted, or unless this Agreement is terminated by the County or the Authority, fees and expenses shall be payable by the Issuer upon issuance of the Bonds, and payment shall be entirely contingent upon issuance of the Bonds. *See* “Termination of Agreement and Legal Services” below. Parties acknowledge and agree that in certain circumstances, payment may be made by the underwriter of the Bonds from gross proceeds of the Bonds, as provided in the bond sale document.

6. Termination of Agreement and Legal Services. This Agreement and all legal services to be rendered under it may be terminated at any time by written notice from either party, with or without cause, and shall be deemed terminated by a course of action inconsistent with a continuing engagement, such as engagement of another bond counsel to provide similar services. In that event, all finished and unfinished documents prepared for adoption or execution by the Issuer, shall, at the option of the Issuer, become its property and shall be delivered to it or to any party it may designate; provided that Bond Counsel shall have no liability whatsoever for any subsequent use of such documents. In the event of termination by the Issuer, Bond Counsel shall be paid for all satisfactory work performed and not previously compensated hereunder, at the customary hourly rates of the attorneys and paralegals who have provided services, and reimbursed for all actual expenses (whether or not bonds are issued), unless the termination is made for cause, in which event compensation, if any, shall be adjusted in the light of the particular facts and circumstances involved in the termination. Upon termination, Bond Counsel shall have no future duty of any kind to the Issuer with respect to the Bonds.

7. Nature of Engagement; Relationships With Other Parties. Bond Counsel, the County, and the Authority acknowledge that the County and the Authority each have other counsel to render day-to-day and ongoing general counsel legal services (the “County Counsel”). Bond Counsel shall circulate documents to and coordinate its services with County Counsel to the extent requested by the Issuer. Bond Counsel shall be entitled to assume that County Counsel has reviewed all documents and matters submitted to the Governing Board and/or the Board of Supervisors for adoption or approval or to officers of the Issuer for execution prior to such adoption, approval or execution. In rendering opinions and performing legal services under this Agreement, Bond Counsel shall be entitled to rely on the accuracy and completeness of information provided and certifications made by, and opinions provided by counsel to, the County and the Authority and other parties, without independent investigation or verification.

Bond Counsel will be entitled to rely on direction given by any authorized officer of the Issuer or the County. From time to time, the Issuer's financing consultant may direct Bond Counsel with respect to terms of the Bonds to appear in draft legal documents, bond structure, financing schedules, and other matters related to the Bonds. Bond Counsel will be entitled to rely on such instructions given to Bond Counsel by the financing consultant without confirming each such instruction with County staff, and, unless otherwise informed, to assume such instruction is given at the direction of County staff.

The role of bond counsel, generally, is to prepare or review the procedures for issuance of the bonds, notes or other evidence of indebtedness and to provide an expert legal opinion with respect to the validity thereof and other subjects addressed by the opinion. Consistent with the historical origin and unique role of bond counsel, and reliance thereon by the public finance market, Bond Counsel's role as counsel under this Agreement is to provide an opinion and related legal services that represent an objective judgment on the matters addressed rather than the partisan position of an advocate.

In performing its services as counsel in connection with the Bonds, Bond Counsel will act as bond counsel to the issuer with respect to issuance of the Bonds; i.e., with respect to lease revenue bonds, Bond Counsel will assist Authority Counsel in representing Authority but only with respect to validity of the Bonds, the bond documents and the issuance resolutions and tax status of interest on the Bonds, and in a manner not inconsistent with the general role of Bond Counsel described in this section.

Bond Counsel's function and responsibility under this Agreement with respect to each series of Bonds terminates upon issuance of each such series of the Bonds (unless terminated sooner as provided herein). Bond Counsel's services as bond counsel are limited to those contracted for explicitly in this Agreement. Any engagement of Bond Counsel with respect to rebate compliance, post-issuance disclosure or any other matter after issuance of any series of the Bonds shall be separate and distinct from its engagement as special counsel through issuance of said series of Bonds. However, unless otherwise provided, any such post-issuance engagement with respect to said Bonds shall continue on the same basis set forth in this section.

The County and the Authority each hereby agree to the joint representation by Bond Counsel of both entities in transactions where both are involved and waive any conflict that may arise from such joint representation. In addition, each hereby acknowledges that Bond Counsel regularly performs legal services for many private and public entities in connection with a wide variety of matters. Some of these clients may have some direct or indirect relationship with the County or the Authority, as, for example, issuers, insurers, suppliers, lenders, investment bankers, consultants, pension plan trustees, landlords, donors or bondholders. With varied client representation, there is always the possibility of other transactions between clients and of disputes among them. Bond Counsel has served as bond counsel, special counsel or underwriter's counsel in financings by governmental entities that include states, counties, municipalities, special districts, joint powers authority and other political subdivisions, as well as departments and agencies of the foregoing, including the State of California. In addition, Bond Counsel is currently advising most major investment banking firms on a variety of matters. Bond Counsel is now providing services for these clients and expects to continue to do so in the

future. To the extent there might appear to be or is any actual or potential conflict arising from such relationships, the County and the Authority waive any such conflict.

8. Limitation of Rights to Parties; Successor and Assigns. Nothing in this Agreement or in any of the documents contemplated hereby, expressed or implied, is intended or shall be construed to give any person other than the County, the Authority and Bond Counsel any legal or equitable right or claim under or in respect of this Agreement, and this Agreement shall inure to the sole and exclusive benefit of the County, the Authority and Bond Counsel.

Bond Counsel may not assign its obligations under this Agreement without written consent of the County except to a successor partnership or corporation to which all or substantially all of the assets and operations of Bond Counsel are transferred. The County may assign its rights and obligations under this Agreement to (but only to) any other public entity that issues the Bonds (if not the Authority). The County and the Authority shall not otherwise assign its rights and obligations under this Agreement without written consent of Bond Counsel. All references to Bond Counsel and County in this Agreement shall be deemed to refer to any such successor of Bond Counsel and to any such assignee of County and shall bind and inure to the benefit of such successor and assignee whether so expressed or not.

9. Miscellaneous.

(a) Bond Counsel shall at all times keep a complete and thorough record of the services and time expended by Bond Counsel and Bond Counsel shall also make available to the County and Authority for inspection purposes all of such records so maintained.

(b) Bond Counsel shall keep in full force and effect during the term of this Agreement an errors and omissions insurance policy in the minimum of One Million Dollars (\$1,000,000.00).

(c) Bond Counsel agrees to comply with the following policies: Non-discrimination. No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this agreement. Bond Counsel shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this agreement. Bond Counsel's equal employment policies shall be made available to County of San Mateo upon request.

(d) With respect to the provision of employee benefits, Bond Counsel shall comply with the County Ordinance which prohibits Bond Counsel from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

(e) Violation of Non-discrimination provisions. Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Bond Counsel to penalties, to be determined by the County Manager, including but not limited to

- (i) termination of this Agreement;
- (ii) disqualification of the Bond Counsel from bidding on or being awarded a County contract for a period of up to 3 years;
- (iii) liquidated damages of \$2,500 per violation;
- (iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.
- (v) To effectuate the provisions of this section, the County Manager shall have the authority to:
 - 1. examine Bond Counsel's employment records with respect to compliance with this paragraph;
 - 2. set off all or any portion of the amount described in this paragraph against amounts due to Bond Counsel under the Contract or any other Bond Counsel between Bond Counsel and County.

(f) Bond Counsel shall report to the County Manager the filing by any person or employee regarding the San Francisco offices of Bond Counsel, in any court of any complaint of discrimination or the filing by any such person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Bond Counsel that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Bond Counsel shall provide County with a copy of their response to the Complaint when filed.

(g) Employee Jury Service. Bond Counsel shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Bond Counsel, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Bond Counsel or that the Bond Counsel deduct from the employees' regular pay the fees received for jury service.

(h) In performing services under this Agreement, Bond Counsel shall comply with all procedures established by the County Counsel's Office.

(i) This Agreement may be terminated at any time by any party upon the giving of written notice to the other parties hereto.

10. Notices. Any and all notice pertaining to this Agreement shall be given in writing, including by email, fax, or sent by U.S. Postal Service, first class, postage prepaid to Orrick, Herrington & Sutcliffe LLP at 405 Howard Street, San Francisco, CA 94105-2669, Attention: Mary A. Collins, Esq., and to the County and the Authority at County of San Mateo,

Office of County Counsel, 400 County Center, 6th Floor, Redwood City, CA 94063, Attention: County Counsel.

11. Counterparts. This Agreement may be executed in any number of counterparts and each counterpart shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same Agreement.

WITNESS THE EXECUTION HEREOF as of the day and year first hereinabove
set forth.

ATTEST:

COUNTY OF SAN MATEO

By: _____
Clerk of Said Board

By _____
Title:

SAN MATEO COUNTY JOINT POWERS
FINANCING AUTHORITY

By _____
Title:

ORRICK, HERRINGTON & SUTCLIFFE LLP

By _____
Mary A. Collins, Partner